



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 32020911

Date: AUG. 20, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a screenwriter, director, and creative producer, seeks classification as an individual of extraordinary ability. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that, although the Petitioner satisfied the initial evidence requirements for this classification, he did not demonstrate his sustained national or international acclaim and establish that he is among the small percentage at the very top of his field of endeavor. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide

sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

A. Regulatory Criteria

The Petitioner is a screenwriter, director, and producer in the fields of television, film, and music. He intends to continue his work in the entertainment industry in the United States.

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner met the criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), and (iv), relating, respectively, to his receipt of lesser-known national awards, published material about him and his work, and judging the work of others in his field. The record supports that determination.

On appeal, the Petitioner asserts that he also satisfies additional criteria related to original artistic contributions of major significance in his field, display of his work at artistic exhibitions and showcases, and performance in leading and critical roles of organizations that have a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(v), (vii), and (viii).¹ As the Petitioner has established that he meets at least three of the evidentiary criteria, we need not reach a finding on these additional criteria here. We will address the evidence regarding these criteria in the final merits analysis below.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by preponderance of the evidence, that he has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine the individual's successes are sufficient to demonstrate extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, we conclude that the Petitioner has not shown his eligibility.

¹ On appeal the Petitioner does not contest the Director's conclusion that he had not satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(ix) or (x).

To demonstrate his receipt of a nationally recognized award for excellence in his field of endeavor, the Petitioner submitted original and translated copies of his 2008 [] award, which he personally received for screenwriting on a popular parody television show in Russia. The record indicates that the [] is the highest award for achievement in the television arts industry in Russia, equivalent to an Emmy award the United States. While the award demonstrates a single significant achievement within the television industry, it does not demonstrate sustained national or international acclaim at the very top of a field. Indeed, letters he submitted from experts in the field to attest to his experience are authored by individuals with supporting evidence listing numerous accolades for their accomplishments—including, for most of the authors, several [] awards, among others. In order to demonstrate the importance of [] awards, the Petitioner submitted articles about other individuals in the entertainment industry who had each received multiple [] and other national and international awards. The achievements of these individuals indicate that they have attained higher levels of acclaim than the Petitioner, which calls into question his assertion that he is at the top of his field as a “leading figure in the field of television and entertainment.”

On appeal, the Petitioner points to various awards won by the parody show and the show’s [] award nominations for categories such as “TV Program Screenwriter,” “Producer of a TV Program,” and “Director of a TV Program.” He also highlights that another well-known show on which he worked won an award for best sitcom. First, we note that nominations cannot be considered awards according to the plain language of the criterion.² Second, these awards were not granted to the Petitioner for his specific contributions,³ but to other show creators or to the show itself. Involvement in an award-winning project does not necessarily reflect the awarding entity’s intention to recognize the work of an individual participant. The Petitioner has not submitted evidence or statements from the awarding entities to confirm that the Petitioner’s contributions to the projects weighed significantly on the selection of the award recipients, such that the awards constituted recognition of the Petitioner’s excellence in his field. Although the record demonstrates that the Petitioner received a notable nationally recognized award in 2008—a []—the receipt of a single award for contributions to one show in a single year thirteen years prior to the filing of his petition is not indicative of an individual who is at the top of his field and who has maintained sustained acclaim within that field.

To demonstrate that material has been published about the Petitioner and his work in major media, the Petitioner submitted articles and documentation of interviews from 2015, 2016, and 2019 discussing his work on music videos and on a documentary he made of his home city in Russia, []. Although the Petitioner has been recognized and his work has been discussed in several media publications, that recognition is limited to his creation of a single documentary film about [] and his production of two music videos for a musical group in Russia. The record does not include evidence explaining the impact of his work within the entertainment industry or elsewhere to signal a level of acclaim commensurate with recognition as an individual at the top of his field who has sustained national or international acclaim.

As to the Petitioner’s experience judging the work of others in his field, the Petitioner submitted evidence of his service as a jury member for two film festivals that he organized in [] an event

² See 8 C.F.R. § 204.5(h)(3)(i).

³ See 6 USCIS Policy Manual F.2(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (stating that the wording of the regulation requires the prizes or awards to be received by the individual, not by his or her employer).

held in 2013 and an international film festival 2019. The Petitioner also submitted evidence of his participation as a jury member from 2013 to 2019 on a long-running and well-known comedy competition show that originated in the Soviet Union and developed into an international competition. The president of the show's [] provided the following in a letter of support (quoted as written):

For over 6 years, [the Petitioner] served as a Jury Member of the [] evaluating stage performances of the competing teams. It was a privilege for us to have among our Jury Members such an acclaimed, award-winning Screenwriter, Director, and Producer as [the Petitioner] is. We invited [the Petitioner] to serve as a [] Jury Member because he is one of the most talented and acclaimed Arts and Television industry experts in Russia. Only professionals of such a high caliber serve as [] Jury Members.

While the league president's statement is laudatory of the Petitioner, it is not corroborated by evidence such as jury selection criteria or other documentation to demonstrate requirements or qualifications necessary for participation as a jury member. Although the Petitioner's work in the entertainment industry may have been known amongst others in the industry and contributed to his selection as a judge of the competition, it is not clear how his participation on the show or in the two film festivals serve to establish that he is an individual of sustained acclaim at the top of his field.

As evidence of the Petitioner's original contributions of major significance in his field, the Petitioner submitted letters of support from experts in the film and television industry. One such letter states that the Petitioner is "known in the industry for his original ideas and high caliber ability" and "has developed original ideas and works that have resulted in successful films, videos, and events." The author further states, "There is no doubt in my mind that [the Petitioner] has made a major impact on the television and entertainment industry, particularly in Russia." This letter, however, like others submitted, discusses the Petitioner's critical roles in the success of several entertainment projects; the letters do not specify how the Petitioner's contributions were original or of major significance to the field. One letter highlights the Petitioner's documentary of his home city of [] stating the following:

[The Petitioner's] original contributions have helped develop the film industry in [] and resulted in unique films and videos that have attracted regional, national and international attention, as noted by government officials such as the Mayor of the city of [] and a Member of the State Duma of the Federal Assembly of the Russian Federation.

To corroborate this statement, the Petitioner submitted an honorary letter of appreciation for cultural contributions to the city of [] in 2017, and the evidence demonstrates that the documentary was well-received by the local population and was covered in stories and interviews with the Petitioner on several media websites. While this evidence shows that the Petitioner is a recognized figure in the entertainment industry by the city and that his work may have had a positive influence on the city, the evidence does not support claims of any original contributions to the film or television industries. The Petitioner may consider his documentary to be an original artistic creation, but he has not demonstrated

that his documentary was an original contribution of major significance in the field of documentary filmmaking or in any other realm of the field of visual entertainment.

Concerning the Petitioner's contention that the Director erred in determining that his work had not been displayed in accordance with the regulation,⁴ we acknowledge that the Petitioner's documentary and other projects in which he was involved demonstrate that the work or the product of his work as a director, writer, or producer has been displayed at artistic exhibitions and showcases. However, the record does not include evidence offering a comparison or other indicator of how the display of the Petitioner's work demonstrates that he has attained acclaim and is considered to be at the top of his field. It is not clear how the evidence demonstrates that the Petitioner is at the top of his field when the display of his work through television was work he was involved with as part of an extensive team, rather than as a major or leading creator or contributor.

As evidence that the Petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the Petitioner submitted several letters of support. These letters of support laude the Petitioner's work on shows for previous employers and emphasize the critical role of his work on several television shows, two of which were adapted from popular shows in the United States and one of which won an award for best sitcom. These letters detail the Petitioner's critical role in the success of that sitcom, his critical role in producing a well-known parody show, and his leading role in directing music videos for a well-known musical group and for a commercial for a hockey organization. Additional letters describe his leading role in the production of awards shows for an internationally recognized haircare brand and for two film festivals. However, the record does not establish by a preponderance of the evidence that the Petitioner has served in leading or critical roles consistently and at a level that would garner recognition within the film or television industry as an individual of acclaim at the top of his field.

Although the Petitioner has served in critical roles for establishments that have distinguished reputations, the number of those establishments is few relative to peers in the entertainment industry for whom he has submitted documentation detailing their career histories, experience, and accolades. As explained previously, the Petitioner's experience and achievements do not appear to equate to or surpass that of the support letter authors or the previous [] award winners, all of whom the evidence of record indicates are highly regarded as acclaimed in their field. For example, the record shows that the author of one letter of support, a producer in Russia, became the first to make a deal with [] who bought five of his company's television series. As another example, a director/producer/writer in the United States who wrote the Petitioner a letter of support has directed numerous well-known series on major U.S. networks, including NBC, CBS, ABC, and The CW. And as an additional example, of the individuals for whom the Petitioner submitted evidence to establish the significance of the [] awards, one of these individuals won five [] two won seven [] one won eight and another won fourteen. The notability and experience of all of these individuals in the entertainment industry suggests a level of professional advancement in their field well beyond that of the Petitioner. The Petitioner has not established by a preponderance of the evidence that he has received sustained national or international acclaim in the entertainment industry and recognition as an individual at the top of his field.

⁴ See 8 C.F.R. § 204.5(h)(3)(vii).

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the record indicates that the Petitioner may have contributed to the successful production of several television programs and events, that he served on the jury of a long-running competition show, and that he created a documentary about a city that drew a positive response from the city. However, the record does not show that this success has translated into individual recognition for the Petitioner at a level that rises to sustained national or international acclaim or demonstrates a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.